IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITIN NO.7379 OF 2005

Ajmuddin D. Kokane .
since deceasedthrough L.Rs. .
Saharabi A. Kokane & Ors. ....Petitioners
V/s.
Mubarak G. Tamboli & Ors. ....Respondents

Mr.Umesh Mankapure for the Petitioners.
Mr.Mandar Limaye i/b Mr.N.R. Bubna for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH JANUARY, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. The impugned order warrants no interference. There is nothing objectionable in the order. In fact the order is correct. When the suit was filed the Plaintiffs contended that pursuant to the agreement of which specific performance was sought, the Plaintiffs were in possession.

3. In the Appeal, an amendment was sought in the alternative to the effect that if for any reason it was found that the Plaintiffs were not in possession, the Court ought to decree possession as well in favour

of the Plaintiffs. It is true that the amendment has been taken out only at the appellate stage. There is nothing in Section 22 of the Specific Relief Act that bars such an amendment at the appellate stage. Indeed the Plaintiffs have succeeded in the suit for specific performance. It is only fair that they be given an opportunity of deriving the entire benefit of decree.

4. The Petitioners shall obviously be at liberty to defend the amended case and for the same the Petitioners are at liberty to adopt proceedings in accordance with law.

5. In the circumstances, the Writ Petition is dismissed.